

The Qur'ānic concept of fasād fil arḍ: Crimes within its purview and the punishments awarded under it

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Abstract

In Islam, peace and tranquility are the most basic and fundamental attributes of life in this universe. War is permissible only in self-defense and in circumstances where all peaceful options are exhausted. Islam ensures peace of mind at the individual level through its spiritual and moral message and establishes peace in collective life by eliminating the different kinds of disorders, crimes and offences from the society. Sanctity of life has been given pivotal importance in Islam. It provides all the necessary safeguards for protection of human life. However, human beings, unlike the angels, are susceptible to committing mistakes, crimes and offences. Such incidences happened even during the life times of the holy Prophet and his rightly guided Caliphs as well as during the era of his Companions. Combating all kinds of crimes and promoting peace and prosperity in the society are, thus, as fundamental and important in an Islamic polity as provision of basic necessities of life like, food, drinking water, clothing and shelter. It hardly needs elaboration that the capabilities and talents of the citizens become stagnant in a state of disorder and the nation cannot excel in various fields of life in insecure conditions

Key Words: objectives of shari'ah, types of fasād, punishment of fasād fil arḍ

The fundamental objective of Islamic criminal justice system is primarily the protection of lives, religion, property, sense and honor of every member of the society. For this purpose, stringent punishments have been prescribed. A major distinction of the Islamic system is that under this system, the State is bound to make utmost effort to control crimes through the Islamic moral code, Islam's spiritual teachings as well as using the resources under its command to prevent crimes and to protect the society as well as the criminal/offender well in advance of the occurrence of crime. The net impact of the elaborate mechanisms of crime prevention is that the commission of crimes punishable under the Islamic criminal system is reduced to negligible levels. Examples of these moral and spiritual mechanisms are the injunctions related to early marriages, observing purdah, restrictions on mixing male and female to minimize the chances of commission of sex related crimes. Similarly, the emphasis in Islam on social justice, equal opportunities, equitable distribution of wealth and elimination of poverty are designed to control crimes stemming out of poverty. Even after making all these necessary arrangements, if a crime is committed, stringent punishments are there to bridle the culprit toward straight path.

In the light of injunctions of the Holy *Qur'an*, this universe was created in a complete harmony and in a refined form but with the passage of time, disorder started spreading everywhere in land, water and sky due to subversive activities of human being. In present circumstances, the signs of disorder and its physical existence on this earth are being emphasized by the scientists. These include the discovery that the Ozone Layer, which absorbs 99% of the sun's high frequency ultraviolet lights, potentially damaging

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to life on earth, has been damaged with a big hole in the Layer, mainly because of human error, negligence and violation of the laws of nature. The harmful impacts of nuclear testing and leak of radioactive waste hardly need any elaboration. Despite growing awareness, human race continues to live under the constant threat of a nuclear disaster and the chances of nuclear war and installation of nuclear weapons continues unabated. Apart from this, the menace of terrorism and activities of anti-State elements are posing threat to the existence of this Country.

In the context of centrality of peace and tranquility in Islam, a key expression that appears in forty eight places of the Qur'ān is *fasād* and its derivatives. The commentators of *Qur'ān* throughout the ages therefore paid much attention to elaborate discussion on the interpretation of “mischief in the land” and the crimes coming within its purview.

The stems coming out of the Arabic root *fds* signify: becoming rotten, decayed, putrid, vicious, wicked, vile and corrupt. *Fasād*, the noun of *fasada* expresses the nuances of putridity, wickedness, immorality, viciousness and inequity. Likewise, *mafsada* or *mafāsīd* signifies the cause of corruption, evil, scandalous deeds, heinous and malicious acts. *Fasād* is sabotaging and undermining while *fāsīd* means bad, foul, rotten, spoiled and decayed.¹ According to Lane, *fasād* signifies badness, evilness and Corruptness, the state of being devoid of virtue or efficacy or a state of disorder.² Ibn Manẓūr in *Liṣān al 'Arab* has added two more nuances to *fasād*, i.e. “failing to achieve the desired objectives” and “when the benefit of anything becomes unachievable for some reasons”.³ The prominent commentator of the Qur'ān, *Ībn 'Arabī* writes that: “There is divergence of opinion amongst the jurists about the meaning of *fasād fil 'ard*. According to some it means “infidelity” or *kufṛ* while according to some others, it signifies creating terror in highways for passengers or travelers making their life in danger. It is also used in the sense of causing hurt or annoying people, torturing and punishing them. The crime of causing hurt, annoying and torturing people by various means is more heinous crime than creating hurdle in highways.”⁴

According to al-Bayḍāwī, *Fasād* means to depart from straightness and normal conditions and its opposite is *Ṣalāḥ*. *Ṣalāḥ* and *fasād* are two words used both in the sense of loss and profit. In other words, it is used in a positive and negative sense. The examples of *fasād* created in the land can be given as promoting mischievous activities and waging war, deceiving Muslims and establishing friendship and close contacts with enemy and providing them secret information regarding Muslims which ultimately results in a general disorder in land: effecting crops, animals and human beings. *Fasād* is also used in the meaning of committing sinful acts in public, defaming and making mockery of religion, creating suspicions in the minds of people about revealed religions and playing with the honor of people which ultimately leads to a chaos and disturbance in the system of world.⁵

Fakhrudīn al-Rāzī, while explaining the Qur'ānic verse “Do not create mischief on land after its reformation” writes: “Do not falsify the books revealed by Allah nor His messengers and His revealed laws”.⁶

While explaining the Quranic verse 2:11 Mustafa Al-Maraghi writes:

“The elements and sources or acts which itself do not amount to *Fasād* but ultimately lead to it, can also be brought within the ambit of *fasād fil Arḍ*. The above Qur'ānic verse impose restriction on such elements and sources’”⁷

Rashīd Riḍā opines that if the specific objectives and purposes of a thing when does not remain intact or become ineffective is called *faṣād*. If the protection of lives, properties and honor is not ensured or hurdles are created in enforcing Islamic law, that can also be termed as “*fasād fil 'arḍ*. The crime of *zina*, theft, killing people unjustly, destruction of crops, fields and human progeny are crimes that come within the ambit of *fasād fil 'arḍ*.”⁸

Shabbir Ahmad ‘Uthmani while elaborating the Qur'ānic verse 5: 32 has provided a list of the following crimes coming under the purview of mischief in the land:

1. Uttering of impious words against the Prophet of Islam, making propaganda against Islam or the Prophet of Islam or the Qur'ān or its commandments.
2. Use of profane words against God or any of His Messengers.
3. Propaganda against the finality of the Prophet Muhammad (PBUH) or devising Prophet-hood for any person after him as the modern Qādyānīs, Ahmadīs do.
4. Adopting apostasy and preaching apostasy.
5. Barring Muslims from the path of Islam or barring the non-Muslims from entering and adopting Islam.
6. Anti-Islamic propaganda and,
7. Spreading atheism and polytheism.”⁹

The Qur'ān declared those individuals and nations as *muḥsidūn* (mischief makers) who were either bestowed with power, wealth or were given a chance to rule over others but instead of performing their responsibilities justly, they not only started committing atrocities against their own people but also revolted against the Creator. Such miscreants include Nimrod, Pharaoh (individuals) and ‘Ād, Thamūd, Lot and the decedents of Abraham (nations).

The Qur'ān, in 27:48 strongly condemned that group of nine miscreants which would use to create mischief on earth and would order others to commit the same. Al-Qurṭubī explains that “this group was fond of looking at the private parts of the people”.¹⁰ Similarly, Gog and Magog were also miscreants (18:94).

Contemporary Selected Opinions on *Fasād fil Arḍ*:

Mufti, Muhammad Shaf‘ī, while explaining the words *ifṣād* and *iṣlāḥ*, *muḥsid* and *muṣliḥ*, writes:

“There are certain acts which absolutely fall within the purview of *fasād fil arḍ*, i.e., dacoity, theft, deception, fraud, illicit relations and abduction etc. Every sensible person consider them as *fasād fil 'arḍ*, and try to avoid it, but there are other certain acts which apparently do not look like mischievous activities but ultimately lead to *fasād*, such as decline of moral values, disunity among Muslims, jealousy and clandestine relations with non-Muslims and fulfilling their secret agendas etc... The crimes of murder, plundering, theft and other crimes can be checked, stopped properly by applying the criminal laws of Islam but degradation of moral values is a crime of different nature which cannot be stopped through the law and it has the capability to become a major source of disorder”.¹¹

According to Amin Ahsan Islahi, any kind of disturbance and interference in the perfect Divine system of the world would be *fasād*. Any human intrusion to it would cause great disturbance and disorder.”¹² Maulana Maududi also interprets *fasād* as “disorder in the land”.¹³

Khurshid Ahmed Nadim sees *fasād fil arḍ* as “where any crime is committed in a barbaric manner, living its bad effect not only on the victim and his family but on the whole society and in process, a bunch of other crimes are being committed by the offender. In such circumstances, a crime does not remain a single crime but falls within the purview of *fasād fil arḍ*. For example, an influential person of a locality asks his poor neighbor to sell out his property in nominal price and leave the locality; when the poor neighbor refuses to comply his orders, he is brutally killed and his dead body is thrown or hanged in a tree. Likewise, a lady is gang raped by a group of people destroying her virginity, honor and respect in the society, it cannot be considered as a normal case of zina but falls within the domain of *fasād fil arḍ*. A severe punishment must be awarded in such cases in the light of 5: 33-34; otherwise the whole society will feel insecure which will ultimately lead to a chaos or mischief on land.”¹⁴

Maulana Zahid al- Rashidi writes: “It is established that one type of crime may change its dimension and nature in different circumstances and occasions and this change of nature and dimension is specifically accepted by the Hanafi Jurists. When we examine the issue of gang rape in the light of this principle, we find that it is totally different from the crime of simple zina cases and is more heinous than the offences of zina; because, when the crime of gang rape is committed, many more crimes are associated with it and it becomes a bunch of various crimes. Firstly, it is not committed secretly but rather in front of general public where the elements of public humiliation are evident. For taking revenge, adopting self-made tactics or modes are itself a crime. When the show of power by exhibiting weapons to create a terror, is coupled with the crime of zina, it is another crime associated with it. The crime of gang rape is a bunch of these crimes. The tendency of this crime is increasing day by day creating worst kind of law and order situation in the country. If a separate legislation has been made to curb this crime (prescribing death punishment under Ta'zīr), it would be inappropriate to declare it as contradictory to the principles of Islam. In our humble view, the crime is spreading and being committed unabated creating disorder on land, so prescribing death punishment for those involved in this heinous crime, is need of the day and there is nothing wrong in it”¹⁵

According to Abdul Malik 'Irfani, “When *fasād* or disorder is spread everywhere in the Islamic State, effecting lives of the members of the society, creating disturbance in the country as a whole making the lives, properties and honor of its citizen in danger, in such circumstances, the principles of “Emergency” shall prevail. The State is empowered to prescribe severe punishments through legislation. He has referred to the action taken by Hazrat Abu Bakr against those who refused to pay zakat.”¹⁶

Javed Ahmed Ghamidi has discussed the issue of *fasad fil arḍ* by writing: “The connotation *fasād fil arḍ* is also used for a situation where a person or a group of individuals start rebellious activities against the lives, properties, honor and sense of the people. As a result, the crimes of murder, terrorism, adultery, rape, theft and dacoity are committed unabated and the people feel pride to be called as dacoit or criminal or a

person run a prostitution for financial gain apart-from involving in other anti-social activities, like terrorism, abduction for ransom etc. creating the sense of insecurity in the minds of the noble and law abiding citizens of the country, such kinds of crimes come within the purview of *fasād fil ard* and the person involved in these acts is called *mufsid*. The punishment prescribed for such criminal is death or hanging or amputation of hands and legs or sending him into a forced exile. All these punishments shall, however, not be awarded in normal circumstances, rather, in a state of emergency where the situation demands to award severe punishments so that other criminals involved in spreading mischief may take lesson from it".¹⁷

Punishment of *fasād fil 'ard*:

The commentators of the Holy Quran, superior Courts and Council of Islamic Ideology of Pakistan have held that the punishment prescribed in 5:33 of the Qur'an should not be confined to *ḥirāba* only, but should be extended to other heinous crimes. In this respect, the Counsel of Islamic Ideology has submitted the following recommendation to the Government.

"*Ḥirāba* and *fasād fil ard* should not be confined to dacoity only but must be extended to other crimes such as terrorism, murder and rape. The criminals involved in such cases should be awarded the punishment as Prescribed in the relevant verses (5:32-33) regarding *ḥirāba*."¹⁸

The Federal Shari'at Court, in one of its judgment on the subject of "Evidence of women in *ḥudūd* cases" has held that: For adultery by force (*zina bil Jabr*), exemplary punishment can be fixed by bringing it under the category of *ḥirāba*. The specific para of the judgment is reproduced in the following lines.

"The laws, principles and rules prescribed for curbing crimes during the normal circumstances are not applicable to rape victims and there is no room for it in Shari'ah because, Islamic laws are based on justice and equity. It is against the principles of justice to ask the rape victim to produce four eye witnesses when she appears for lodging F.I.R before the competent authority. The act of rape or *zina bil Jabr* in fact, is a declaration of war against Allah and his apostle and it is at par with *ḥirāba* from every aspect. It should be dealt with in the same manner as *ḥirāba*. If aggression against the property of another is termed as *ḥirāba*, then aggression or assault against the honor of any individual is more heinous crime then aggression against property. The honor and its protection are more important as compare to property. The honor is more valuable than all other things and the human being struggles throughout his life for honor and respect in the society. So aggression against honor is more heinous kind of *fasād fil ard*. The Court also held that *zina bil jabr* is different from other kinds of *zina* like *zina bil raḍā*; it is a worst kind of *fasād fil ard*. To prove this crime, the quantum of witnesses prescribed for *zina bil raḍā* will not be applicable rather the witnesses required to prove the crime of *ḥirāba* will be needed, that is two male adult, Muslim witnesses. As far as the crime of *ta'zīr* is concerned, For proving crimes under *ta'zīr*, any kind of proof including circumstantial evidences, the complaint of the complainants will be taken into consideration."¹⁹

Justice Khalil Ramday, the Ex-judge of Lahore High Court has discussed this issue scholarly while deciding a criminal case entitled *Abdul Ghafoor vs State*. According to

him, guilty of *fasād fil arḍ*, inter alia include those who disturb the collective peace and tranquility of the society, those who disrupt the orderly running of the State, those who breach law and order, those who disobey the lawful commands of the head of the State, those who take up arms against the State or its agents and are those who cause threat to the economic life of State. According to him, some jurists have gone to the extent of declaring that unauthorized deforestation, illegal destruction of crops, polluting the environment and such like acts fall within the purview of *fasād fil arḍ*. According to him the punishment of *fasād fil arḍ*, in the light of Islamic injunctions, is death punishment.²⁰

In Shari'ah petition No.1/L of 1999 and Shari't petition No143/L of 2000, Muḥammad Khalid and other VS State, the Federal Shari'at Court has held that:

“*Fasād fil 'arḍ* is very comprehensive word and includes any crime that, in the opinion of the legislative body of an Islamic State, upset social structure of the society and cause disruption, commutation, moral degradation, corruption and indiscipline in its rank and file”.

In an other case entitled Muhammad Riaz vs State, the Federal Shariat Court in its long judgement has held that the punishment prescribed for the crime of *ḥirāba* is death, crucifixion, cutting of hands and feet from the opposite side, or expulsion from land or deportation, which has been interpreted by some as imprisonment. The commentators have confined the applicability of this verse to sedition, dacoity or high way robbery. But there is no justification for limiting its scope and extent. The words of the verse are applicable inter alia to situation where the actions of individual or a group amount to creating *fasād fil arḍ*. In fact according to one sense, spreading corruption or disorder in the land itself amounts to waging war against Allah who has ordained retention of a balanced society full of virtues and free of vices.²¹

No proper definition of *fasād fil arḍ* is found in the criminal laws enforced in Pakistan. Under Section 311 of the Pakistan Penal Code 1860, there is a mention of *fasād fil arḍ*, accordingly, in *qatl-e 'amad*, if the heirs or *walis* made compromise or waived the right of *qisās*, the courts have been empowered to award the killer the punishment of imprisonment under *ta'zīr* which may extend to fourteen years on the basis of *fasād fil arḍ*. In this respect, the previous record of the criminal shall be taken into consideration. Here it has not been clarified that if the crime of murder is committed in a brutal and horrifying manner, the principles of *fasād fil arḍ* will apply and criminal will face a punishment under *ta'zīr* even after compromise or waiver of the right of *qisās*.

It is thus concluded that *fasād fil arḍ* is a comprehensive word and include any crime that in the opinion of legislative body of the Islamic State, upset the social structure of the society and cause disruption, commutation, moral degradation, corruption and indiscipline in its rank and file. In some Islamic countries like Iran and Saudi Arabia, death punishment has been prescribed for the crime of corruption, misappropriation and financial dishonesty by bringing it under the ambit of *fasād fil arḍ*. According to orthodox jurists and commentators, contempt of the Prophet of Islam, propaganda against Islam, profane words against Allah or other prophets, disbelieving in the finality of the Prophet of Islam, creating obstruction for Muslims in the way of Islam, spreading atheism or polytheism, disturbing peace in the society, highway robbery, *ḥirāba*, apostasy, zina, less measuring and weighing and unjustified murder are crimes that squarely fall within the ambit of *fasād fil arḍ*. The contemporary Ulema and writers have

prescribed a principle to declare any crime as *fasād fil ard*: According to them, if any crime is committed in a horrifying and barbaric manner not in a normal way, creating terror and insecurity in the minds of the members of the society, such crime can be declared as *fasād fil ard*. For example, if a criminal killed brutally innocent children by using fire-arms or explosive, this kind of murder cannot be treated as a normal murder case rather it amounts to *fasād fil ard*. This view is endorsed by the Superior Courts, Council of Islamic Ideology and Federal Shari'at Court of Pakistan, as mentioned above.

About the punishment for those involved in *fasād fil ard*, the majority of the jurists opine that the punishment prescribed in al-Mā'idah: 32-33 of the Qur'ān for the crime of *ḥirābah* like killing, crucifixion and hanging, cannot not be confined to *ḥirābah* only rather it will be extended to other heinous crimes which have tendency to upset the social structure of the society and weaken the foundation of Islamic State.

There is no legal bar in including other heinous crimes in the meaning of *ḥirābah*. Logically, if an aggression against the property of a person is termed as *ḥirābah*, then aggression or assault against the honor and lives of the innocent people is more heinous and serious crime as compare to aggression against property. The life and honor and its protection is more important and valuable than other things. The net result is that the punishment prescribed for *ḥirābah* can also be awarded to a person involved in rape, gang rape, terrorist activities, corruption and other heinous crimes, by bringing them within the purview of *fasād fil ard* if heinous crimes are committed inside the Islamic State unabated, the Islamic State can proclaim emergency in the country and use power in its command. In such circumstances, death punishment can be prescribed for crimes listed above by bringing it within the purview of *fasād fil ard*. We have long list of death punishments awarded by the four guided Khulafā and companions in subsequent period for crimes, where no death punishment has been prescribed. The present situation demands to curb crimes and promote peace and tranquility in the society, because, in a state of disorder and insecure conditions, the capabilities and talents of the citizens become stagnant and the nation cannot excel in various fields of life.

Endnotes:

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